IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 299 OF 2004

Shri Suresh Jagannath Kulkarni ... Appellant

V/s

Shri Bhaskar Shambhu Kothiyan & anr. ... Respondents

Ms. S.A. Mudbidri for the appellant.

Mr. V. Iyer i/by Madhav Associates for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 10TH OCT., 2005

P.C.:

1. The appellant has preferred this appeal agsinst the judgment and order passed by the District Judge, Sindhudurg at Oros dated 29.10.2003 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Sr. Divn., Ratnagiri at Sawantwadi, dated 30.3.1998 dismissing the plaintiff's suit for want of jurisdiction.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit against defendant No.2 - the original owner of the land Block No.133 and defendant No.1 - the purchaser of the said land for the relief that the transaction entered between defendant Nos. 1 and 2 of sale dated 19.7.1995 was void ad-initio and liable to be set aside with a consequential relief that the plaintiff has a preferential right of purchase of the said land under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "the Concolidation Act"). The plaintiff also sought consequential relief to the effect that the decree passed against defendant Nos. 1 and 2 to accept Rs.83,000/- from the plaintiff and execute sale deed fo the suit land in his favour.

Defendants contested the suit inter-alia denying the allegations made by the plaintiff raising various objections in respect of the bar of jurisdiction.

4. The learned Trial Judge on the basis of such pleadings referred the matter to the competent authority under the Consolidation Act to record his finding as per the reference made by the Civil Court. The issue was to

the effect that, whether the transfer of property by sale deed dated 19.7.1995 by the defendant No.2 in favour of defendant No.1 had created fragment or not.

The competent authority under the said Act by speaking order returned the reference holding that no fragment was created by the alleged transfer and on the basis of the said finding the learned Trial Judge came to the conclusion that the suit claiming preferential right which the plaintiff had claimed to have acquired by virtue of the provisions of the said Act, was bad for want of jurisdiction and dismissed the suit on that count holding that the suit was not tenable in view of the provisions of Sec. 36-A and 9 (3) of the said Consolidation Act read with Sec.9-A of C.P.C.

5. The appeal was carried to the District Court, Sindhudurg at Oros. The learned District Judge, after hearing both sides, dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The lower appellate Court, on the basis of available evidence, has come to the conclusion that the

plaintiff-appellant failed to prove that the sale deed dated 19.7.1975 created a fragment and he had right of pre-emption or preferential right of purchase and, as such, it was found that plaintiff's suit deserves to be dismissed. It is obvious that, on the basis of the findings recorded by the competent authority under the Consolidation Act, both the Courts below have adjudicated the dispute on merits and, as such, both the Courts below concurrently held that the suit was not tenable in law. The concurrent findings recorded by both the Courts appear to be properly based on the question of law and, therefore, I do not see any reason to interfere in the said matter.

7. In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 289 of 2004 also stands dismissed with no order as to costs.

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